

1 CORY L. JOHNSON
2 JASON A. HARN
3 COLVIN + HALLETT, P.S.
4 719 Second Avenue, Suite 1450
5 Seattle, Washington 98104
6 T: (206) 223-0800
7 F: (206) 467-8170
8 E: cjohnson@colvinhallettllaw.com

9 *Attorneys for Plaintiff*

10 UNITED STATES DISTRICT COURT
11 FOR THE WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 JIM HODGE & GAIL THOMPSON,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.

CASE No. _____

COMPLAINT FOR REFUND OF
INTERNAL REVENUE TAXES

18 COMES NOW JIM HODGE AND GAIL THOMPSON, by and through his and her
19 undersigned attorneys, and allege as follows:

20 **NATURE OF ACTION**

21 This is an action seeking a refund of federal income tax paid for tax year 2014 in
22 the amount of \$124,589 plus interest.
23

PARTIES

1. Plaintiff Jim Hodge and Gail Thompson (“Plaintiffs”) reside in Snoqualmie, Washington, within the Western District of Washington. Jim Hodge’s Taxpayer Identification Number is: xxx-xx-██████ Gail Thompson’s Taxpayer Identification Number is xxx-xx-██████

2. Defendant is the UNITED STATES OF AMERICA (“Defendant”).

JURISDICTION & VENUE

3. Subject matter jurisdiction is proper in this Court, pursuant to the provisions of Title 28, United States Code § 1346(a)(1), and Title 26, United States Code § 7422.

4. Venue is proper in the Western District of Washington under Title 28, United States Code § 1402(a)(1).

FACTUAL ALLEGATIONS

5. Plaintiffs seek a refund of \$124,589 plus interest that has accrued and continues to accrue according to law for tax year 2014.

6. Mr. Hodge co-founded a company called Point B Inc. in 1995. Point B was structured as an S-corporation, and Mr. Hodge was one of three shareholders.

7. Point B was and is a consulting business that consulted with clients on management, venture capital investment, and real estate development.

8. Mr. Hodge served in roles similar to a COO and CFO, and was actively involved in the day-to-day operations of Point B. He actively and materially participated in the business.

9. In 2014, Mr. Hodge sold an interest in Point B, which resulted in a substantial gain.

1 10. Mr. Hodge and Ms. Thompson's original 2014 tax return included the net
2 gain from the sale of an interest in Point B in net investment income which was subject to
3 the Net Investment Income tax under 26 U.S. C. § 1411, which resulted in \$124,589 of tax.

4 11. Mr. Hodge and Ms. Thompson paid all of the tax that was due on their
5 original 2014 tax return.

6 12. Mr. Hodge's accountants later realized that the sale of Point B should not
7 have been subjected to the Net Investment Income tax, and prepared an amended 2014
8 return claiming a refund of the Net Investment Income tax previously reported.

9 13. The 2014 Form 1040X amended return did not include the net gain from the
10 sale of Point B on Form 8960 for Net Investment Income Tax, which reduced the tax
11 liability by \$124,589. Accordingly, the amended return claimed a refund of \$124,589.

12 14. An amended return, Form 1040X, for 2014 was filed on May 23, 2016.

13 15. On May 12, 2017, the IRS denied the Plaintiffs' claim for refund. Exhibit 1.
14 The IRS's denial did not provide any explanation for its decision. Taxpayer attempted to
15 have IRS Appeals review the denial determination; however, Appeals refused to do so.

16 16. The IRS's determination to deny the claim was erroneous. The Net
17 Investment Income Tax under § 1411 applies only to investment income and gains from
18 passive activities under § 469; it does not apply to gains from activities in which the
19 taxpayer materially participates. Mr. Hodge materially participated in Point B. As a result,
20 gain from the sale of shares in Point B is not investment income and is not subject to the
21 Net Investment Income Tax.

22 17. For the reasons described in the preceding paragraphs, Plaintiffs are entitled
23 to a refund of \$124,589 plus interest for tax year 2014.

CLAIM 1

18. Plaintiffs re-allege and re-incorporates all facts in the preceding paragraphs.

19. Based on the facts set forth above and the applicable law, Plaintiffs are entitled to a refund of \$124,529 plus interest thereon.

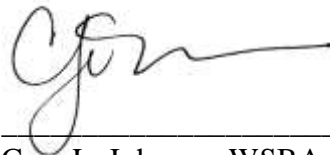
PRAYER FOR RELIEF

WHEREFORE Plaintiffs prays that judgment be entered in their favor as follows:

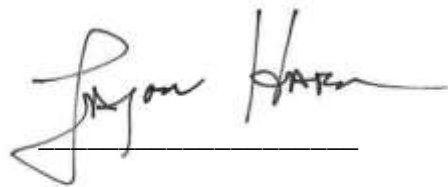
1. For a refund of income tax in the amount of \$124,589 for year 2014 plus interest;
2. For reasonable attorneys' fees;
3. For costs of suit herein; and
4. For such other and further relief as the Court deems just and equitable.

DATED this 10th day of May, 2019.

COLVIN + HALLETT, P.S.



Cory L. Johnson, WSBA #38854
719 Second Ave., Suite 1450
Seattle, WA 98104
T: (206) 223-0800/ F: (206) 467-8170
Email: cjohnson@colvinhallettlaw.com



Jason A. Harn, WSBA #54017
719 Second Ave., Suite 1450
Seattle, WA 98104
T: (206) 223-0800/ F: (206) 467-8170
Email: jharn@colvinhallettllaw.com

Attorneys for Plaintiffs